



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TEXAS ORTHOPEDIC HOSPITAL
c/o HOLLOWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

Respondent Name

TRANSCONTINENTAL INSURANCE CO

Carrier's Austin Representative Box

Box #47

MFDR Tracking Number

M4-07-1249-01

MFDR Date Received

October 30, 2006

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated October 27, 2006: "...The total sum billed was \$65,773.85. There was no on-site audit performed by the insurance carrier...Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...The fees paid by Crawford Company do not conform to the reimbursement section of Rule 134.401...In closing, it is the position of Texas Orthopedic Hospital that all charges relating to the admission of [iw] are due and payable as provided for under Texas law and the Rules of the Division..."

Amount in Dispute: \$43,740.39

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated November 16, 2006: "We have been retained by to represent its interests in the above-referenced medical dispute. Effective immediately, please forward all correspondence related to this dispute to the address listed below:"

Respondent's Supplemental Position Summary Dated November 21, 2006: "Reimbursement in this case should be pursuant to the standard per diem reimbursement method. The Provider has not identified any co-morbidities or complications in this case that required the hospital to provide unusually extensive and costly services beyond that which would normally be provided for this type of surgery and for which the hospital was not properly reimbursed under the standard per diem plus carve outs reimbursement method."

Responses Submitted by: Stone Loughlin & Swanson

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
November 1 through 6, 2005	Inpatient Hospital Services	\$43,740.39	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits dated December 23, 2005

- 900-021 – any network reduction is in accordance with the network referenced above
- W1 – Workers Compensation State Fee Schedule Adjustment
- 400-001 – the inpatient reimbursement has been based on per diem, stoploss factor or billed charges whichever is less
- 16 – claim/service lacks information which is needed for adjudication.
- 855-022 – charge denied due to lack of sufficient documentation of services rendered.

Revised explanation of benefits dated February 23, 2006

- W10 – no maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- 855-016 – payment recommended at fair and reasonable rate
- W3 – additional payment made on appeal/reconsideration
- 920-010 - upon receipt of a requested report, the recommended allowance has been adjusted
- Additional note: provider submitted invoices for implants
- Additional note: no stoploss-no documentation submitted to support unusually extensive services

Revised explanation of benefits dated March 7, 2006

- W4 – No additional reimbursement allowed after review of appeal/reconsideration

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$65,773.85. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its original position statement asserts that "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%..." The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above, the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was five days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of five days results in an allowable amount of \$5,590.00.
 - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$891.82 for Fentanyl w/Bup. 0.1% and \$850.20 for Fent 5mcg/ml/Bup 0.1%. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals billed under revenue code 250. For that reason, reimbursement for these items cannot be recommended.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
 - Review of the requestor's medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Rev Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
278	Biomet tibial nail	Not supported	NA	NA	NA
	SNI rng ful 180 710701	71070115 Taylor spatial frame full ring 180mm	3 @ \$432.72 ea	\$1298.16	\$1427.98
	SNI fix bolt slot 1007	100700 wire fixation bolt-slotted	5 @ \$15.25 ea	\$ 76.25	\$ 83.88
	SNI bolt 20mm 103203	103203 bolt 20mm	1 @ \$1.24 ea	\$1.24	\$1.36
	SNI nut 10mm 103300	103300 nut 10mm	48 @ \$1.24	\$59.52	\$65.47
	SNI anch 2mm 102706	102706 washer 2.0mm, fixation bolt	2 @ \$5.98	\$11.96	\$13.16
	SNI fix bolt cann 1006	100600 wire fixation bolt cannulated	1 @ \$14.00	\$14.00	\$15.40
	SNI anch 4mm 102707	102707 washer, 4.0mm fixation bolt	2 @ price not legible	NA	NA
	SNI rod part 170 L1001	Not supported	NA	NA	NA
	SNI wire 1.8x370 10210	102102 wire bayonet pt cort 1.8mm dia 370mm	1 @ \$22.06	\$22.06	\$24.27
	Screw titanium 5x30 and 5x40	Not supported	NA	NA	NA
	SNR cube ranch 2H 1034	Not supported	NA	NA	NA
	SNR sleeve centr 6 1034	103405 6mm centering sleeve	1 @ \$47.99	\$47.99	\$52.79
	SNR cube ranch 2H 1034	103452 2 hole rancho cube	1 @ \$71.86	\$71.86	\$79.05
	SNI strut med 7107022	7107022 Taylor spatial strut medium	3 @ \$393.12	\$1179.36	\$1297.30
	SNI strut long 710702	71070230 Taylor spatial strut long	3 @ \$393.12	\$1179.36	\$1297.30
	SNI set screw 112727	112727 hex-fit set screw	1 @ \$1.43	\$1.43	\$1.57
	SNI HA half pin 710708	Not supported	NA	NA	NA
	Wire SN 3x900 GDE 1120	Not supported	NA	NA	NA
	TOTAL ALLOWABLE \$4,359.53				

The division concludes that the total allowable for this admission is \$9,949.53. The respondent issued a total payment of \$11,582.77. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive, and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	<u>November 2, 2012</u> Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	<u>November 2, 2012</u> Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.